

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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JO ANN SPOLAR,	)	
	)	DOCKET NOS: PT-2003-77
	)	through 85
	)	
Appellant,	)	FACTUAL BACKGROUND,
	)	CONCLUSIONS OF LAW,
-vs-	)	ORDER and OPPORTUNITY
	)	<u>FOR JUDICIAL REVIEW</u>
THE DEPARTMENT OF REVENUE	)	
OF THE STATE OF MONTANA,	)	
	)	
Respondent.	)	

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The above-entitled appeals were heard on March 3, 2005, in Butte, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (Board). The notice of the hearing was duly given as required by law. The taxpayer, JoAnn Spolar, appeared on her behalf. She was also represented by Jack McLeod, agent. Appraiser Joe Rask represented the Department of Revenue (DOR).

The duty of this Board is to determine the appropriate market value for the property based on a preponderance of the evidence. By statute (15-2-301, MCA), this Board may affirm, reverse or modify any decision rendered by the county tax appeal board. Testimony was taken from both the taxpayer and the Department of Revenue, and exhibits from

both parties were received. The Board allowed the record to remain open for a period of time for the purpose of receiving post-hearing submissions.

This Board finds and concludes that the taxpayer did not support the contention that the DOR had erred in its appraisal and, therefore, denies the appeals. The decision of the Silver Bow County Tax Appeal Board is reversed.

#### **FACTUAL BACKGROUND**

1. Due, proper, and sufficient notice was given of this matter, the hearing hereon, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.
2. The subject property, land only, is described as follows:

**PT-2003-77: Lot 9, Block 4, Spolar Addition to the City of Butte, County of Silver Bow, State of Montana. (Assessor ID#: 001867100).**

**PT-2003-78: Lot 8, Block 4, Spolar Addition to the City of Butte, County of Silver Bow, State of Montana. (Assessor ID#: 001867600).**

**PT-2003-79: Lot 7, Block 4, Spolar Addition to the City of Butte, County of Silver Bow, State of Montana. (Assessor ID#: 001867500).**

**PT-2003-80: Lot 17, Block 1, Spolar Addition to the City of Butte, County of Silver Bow, State of Montana. (Assessor ID#: 001866800).**

**PT-2003-81: Lot 15, Block 1, Spolar Addition to the City of Butte, County of Silver Bow, State of Montana. (Assessor ID#: 001866600).**

**PT-2003-82: Lot 10, Block 1, Spolar Addition to the City of Butte, County of Silver Bow, State of Montana. (Assessor ID#: 001866100).**

**PT-2003-83: Lot 9, Block 1, Spolar Addition to the City of Butte, County of Silver Bow, State of Montana. (Assessor ID#: 001866000).**

**PT-2003-84: Lot 7, Block 1, Spolar Addition to the City of Butte, County of Silver Bow, State of Montana. (Assessor ID#: 001865800).**

**PT-2003-85: Lot 8, Block 1, Spolar Addition to the City of Butte, County of Silver Bow, State of Montana. (Assessor ID#: 001865900).**

3. At the hearing before this Board, the taxpayer and the Department of Revenue agreed that Lots 1 through 6, Block 1, are also under appeal in the matter. The taxpayer intended to appeal the DOR value of these lots, but there was a shortage of appeal forms.

4. The DOR valued Lots 1 through 6, Block 1 at the following values for tax year 2003. The first number is the original value and the second is the value after an AB-26 adjustment:

Lot 1:	\$5,802	-	\$1,762
Lot 2:	\$5,955	-	\$2,031
Lot 3:	\$6,096	-	\$2,279
Lot 4:	\$5,796	-	\$1,751
Lot 5:	\$5,781	-	\$1,725
Lot 6:	\$5,703	-	\$1,588

5. For tax year 2003, the Department of Revenue appraised the subject land as follows:

**PT-2003-77: \$19,206**

PT-2003-78: \$19,206  
PT-2003-79: \$19,206  
PT-2003-80: \$ 3,147  
PT-2003-81: \$ 2,128  
PT-2003-82: \$ 3,867  
PT-2003-83: \$ 2,715  
PT-2003-84: \$ 2,360  
PT-2003-85: \$ 5,421

6. The taxpayer filed these appeals with the Silver Bow County Tax Appeal Board on September 5, 2003, seeking an unspecified reduction in value. The following reason was cited for the appeal:

**Overvalued.**

7. In its January 5, 2004 decision, the county board adjusted some of the subject values, stating:

The Butte Silver Bow Tax Appeal Board met on December 15, 2003 with Jo Ann Spolar, her representative, Jack McLeod, and Joe Rask of the Department of Revenue. The following information was before the Board. Ms. Spolar had filed appeals on 9 properties as follows: Lots 7, 8, 9 & 10 of Block 1, Spolar Subdivision; Lots 15 & 17 of Block 1, Spolar Subdivision; Lots 7, 8 & 9 of Block 4, Spolar Subdivision. Ms. Spolar stated that she had filed AB 26 forms on additional property but was unable to file tax appeals as the Clerk and Recorder was out of forms at the time. This was acknowledged by Mr. Rask and the board agreed to hear all of Ms. Spolar's appeals at the current time. The additional properties are Lots 1 thru 6 Block 1, Spolar Subdivision.

The determination of the Board is as follows:

The Department of Revenue has agreed to aggregate the values of Lots 1 thru 10 of Block 1 with a value of \$1.04 per square foot. Ms. Spolar and Mr. McLeod had stated that they felt that the value should be approximately \$1.00 per sq. foot. We find the \$1.04 per sq. ft. to be fair.

Values of Lots 15 & 17 of Block 1 are reduced to the same value per sq. ft. as above due to the unique features of these lots that limit their use.

The value of Lot 8 of Block 4 remains as appraised. It has been developed. We find the value to be accurate.

The value of Lots 7 and 9 of Block 4 are to be reduced to \$1.46 per square foot. This is based on the average of the prices of current comparable building site sales in the Butte Silver Bow area as provided by Mr. McLeod as exhibit B.

8. Mr. McLeod then appealed these decisions to this Board on January 23, 2004, citing the following reason for appeal:

On behalf of my client Mrs. JoAnn Spolar of 390 Holmes Avenue. Butte, Montana please consider this our appeal of the decision of the Butte-Silver Bow County Tax Appeal Board with respect to the lots as covered in the appeals heard by the board on December 15, 2003. We received notification of the board's decision on January 8, 2004.

The basis and reasoning for this appeal is clearly the failure of the board to recognize that the standard of market value and equity in assessment is clearly violated

as well as the boards failure to comply with code 15-15-103. Each of the appeal forms is respectfully submitted the date above written. Our explanations of the reasons for appeal will be clearly demonstrated at the hearing you establish for our appeal to you.

We have not entered on each appeal form this broad based cause for review but each appeal has been executed by the signature of JoAnn Spolar. . .

#### TAXPAYER'S CONTENTIONS

Mr. McLeod stated that these appeals boil down to two issues: what is the market value of the developed lots versus the undeveloped lots. He testified that Lots 7 and 9, Block 4, Spolar's Subdivision, are non-buildable lots and should be valued at \$0.10 per square foot.

Mr. McLeod testified that the non-buildable Lots 7, 8, 9, 10, 15 and 17, in Spolar's #1 Subdivision, Block 1, are also under appeal. Block 1, Lots 4 through 10, 14, 15, and 17, are under appeal, according to JoAnn Spolar.

Taxpayer's Exhibit 2 is a series of photographs of the subject properties. These lots are non-developed lots: they do not have improved streets, and only one home has a sewer system and is served by a domestic well. The geological structure of these lots do not allow for excavation, according to the taxpayer, though she

acknowledges that there is no government restriction prohibiting this activity. The record contains a February 1, 2005 letter from Hunter Brothers Construction in response to Mr. McLeod's request for comments concerning sewer and water service to Block 1 of Spolar's Addition. The letter states that Hunter Brothers were retained to provide sewer service to Lot 11 of the subject subdivision. "In our experience this was one of the most difficult services we were ever called upon to complete. The geological formations and granite out cropping compelled our firm to drill and blast the major portion of the sewer extension. From our experience we would not bid nor entertain any future extensions of water and sewer service to the remainder of Block 1. Lots 6 to 10 would in all likelihood be cost prohibitive to the construction of single family dwellings."

Mr. McLeod testified that the sewer line to Lot 11 cost in excess of \$12,000 and that "you would not get an excavating contractor in Butte to go up there and dig a basement at the same rate that he'd dig one for down in the alluvial flats. It wouldn't even be close because . . . they're gonna have to blast."

Ms. Spolar further stated that "she is not going to give any more lots away and spend \$17,000 for water and then have someone take me to court because I didn't disclose to them that they would have to drill and blast to put in a basement or even a crawlspace."

In addition, the taxpayer claims that the subject property is adversely impacted by the presence of industrial development and railroad tracks. Within 50-60 yards of the undeveloped lots for which the taxpayer is requesting a value of \$0.10 per square foot, there is a "hot area" of contamination that ARCO has reclaimed and posted "no trespass."

The taxpayer requested the ability to file, as a post-hearing submission, copies of documents related to the sale of Lot 6 in Block 4 of the Spolar Addition. In this submission, Mrs. Spolar emphasized that the lot value of \$22,000 was for the purpose of obtaining bank financing.

She states that "this was part of a package transaction. The buyer was compelled to allow us to build their home for them. They could not have offered to sell the lot on the market. I placed a value of \$1.00 per square foot on this transaction. I would like to remind you that



Mr. McLeod, my agent, testified about the sale I made to Wayne Sterns of a lot larger than but identical to lot #6. Mr. Sterns paid me \$0.60 per square foot. This sale is between a willing buyer and willing seller and meets the statutory test of fair market value. . ."

The taxpayer's post-hearing submission also contains copies of the purchase order and delivery agreement between the Spolars and the purchasers of Lot 6 regarding home construction on this lot. The documents do reference a \$22,000 sales price for the subject land and a construction estimate of \$120,282 for the home.

#### **DOR'S CONTENTIONS**

Mr. Rask testified that, as a builder himself, the nature of Butte is that many homes are constructed on granite. There is enough need in Butte for construction involving drilling and blasting that there are firms that do that. Therefore, the term "unbuildable" for a lot is an overstatement. With enough money, any lot is buildable.

Mr. Rask stated his desire to address the subject appeals in two approaches: as developed and undeveloped areas in two different neighborhoods (005 and 0016.) DOR Exhibit A contains aerial maps of these two neighborhoods.

Lot 6, (9,016 square feet) adjacent to subject Lots 7, 8 and 9, Block 4, sold in 1998 for \$22,000. (DOR Exhibit B) Mr. Rask testified that he recently spoke with the buyer who confirmed that the lot was purchased for \$22,000, and the buyers then contracted a house to be constructed on the lot by the Spolars. (The taxpayer would assert that the purchaser bought an entire house package - land and home construction - for \$102,007 - and asked the Board to allow a post-hearing submission on that issue.)

DOR Exhibit B (page 3) also contains a listing of 39 vacant land sales used to determine land values in neighborhood 016 for the current reappraisal cycle with a base year of 2002. The average sale date was 04/1998; the average sale price was \$29,333 and the average lot size was 13,382.546 square feet, for an average per unit value of \$2.19 per square foot.

DOR Exhibit C contains information relating to the undeveloped area (Neighborhood 005) on the aerial maps of DOR Exhibit A. This exhibit is relevant to the subject Lots 1 through 6, and Lots 7 through 10 and 12 through 15 and Lot 17, Block 1; and Lots 10, 11 and 12, Block 3.

Mr. Rask stated that Neighborhood 005 was valued on an

acreage basis because that's how it's bought and sold in the marketplace. Page three of Exhibit C contains sales information pertinent to nine vacant land sales that were used to provide values for this neighborhood for the current reappraisal cycle with a base year of 2002. The average sale date was 04/1997; the average sale price was \$11,547 and the average lot size was 2.265 acres for an average per acre value of \$5,098. In support of the DOR values, three comparables sales within the subject subdivision were discussed:

Comparable Number	Sale Date	Sale Price	Lot size in acres	Per acre value
1	6/20/94	\$3,000	0.210	\$14,286
2	7/3/03	\$15,000	.027	\$72,464
3	1/15/04	\$30,000	1.15	\$26,087
Average			<b>.522</b>	<b>\$37,612</b>

If anything, Mr. Rask feels that the DOR has valued the subject lots too low.

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### **BOARD'S DISCUSSION**

It is the Board's opinion that the county tax appeal board's increase in the value of certain lots was inadvertent. Given the number of lots under appeal and the quantity of information provided at hearing, this Board can see how easy it was to become confused.

The taxpayer indicated that the undeveloped lots should be valued at 10¢ per square foot because they are "geologically challenged". The Board recognizes that these lots may be difficult and expensive to develop but it can be done and, given the right market conditions, it would be done. The taxpayer did not offer any market-based information to support a reduction in DOR's current values of 12¢ to 60¢ per square foot for these lots. The lots used by DOR as comparables ranged from 33¢ to \$1.67 per square foot.

Similarly, the DOR values for developed lots were supported by market information that actually reflects greater value than the value assigned by DOR to Spolar's developed lots.

This Board must evaluate the evidence that it has been presented and issue an opinion of value based on that

evidence. The taxpayer is the Appellant in this proceeding and therefore has the burden of proof. It is true, as a general rule, that the appraisal of the Department of Revenue is presumed to be correct and that the Taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. (*Western Airlines, Inc., v. Catherine Michunovich et al.*, 149 Mont. 347, 428 P.2d 3, (1967)).

It is the opinion of the Board that the taxpayer did not overcome the presumption that the DOR values are correct. The Board is satisfied that the DOR presented evidence that supports its assessed values, as adjusted through the AB-26 process. The Board upholds the values set by the DOR and adjusted through the AB-26 process.

#### **CONCLUSIONS OF LAW**

1. This Board has jurisdiction over the matter under appeal pursuant Section 15-2-301, MCA.
2. §15-8-111 MCA. Assessment - market value standard - exceptions. (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

3. Western Airlines, Inc., v. Catherine Michunovich et al.  
149 Mont. 347, 428 P.2d 3 (1967).
4. The values set by the DOR, as adjusted through the AB-26 process, are upheld.
5. The appeals of the taxpayer are denied and the decisions of the Silver Bow County Tax Appeal Board are reversed.

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**ORDER**

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject land shall be entered on the tax rolls of Silver Bow County by the local Department of Revenue office at the value determined by the Department of Revenue.

Dated this 28th day of March, 2005.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

( S E A L )

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GREGORY A. THORNQUIST, Chairman

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JOE R. ROBERTS, Member

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SUE BARTLETT, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 28th day of March, 2005, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

Jack McLeod  
McLeod Realtors  
1905 Holmes Avenue  
Butte, Montana 59701-3566

Office of Legal Affairs  
Department of Revenue  
Mitchell Building  
Helena, MT 59620

Ms. Dorothy Thompson  
Property Tax Assessment  
Department of Revenue  
Mitchell Building  
Helena, Montana 59620

Attn: Joe Rask  
Silver Bow County Appraisal Office  
155 West Granite  
Butte, Montana 59701

Mary Lou Jones  
Chairperson  
Silver Bow County Tax Appeal Board  
3737 Augusta Avenue  
Butte, Montana 59701

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Donna Eubank  
Paralegal